

## **Enforcement Response Policy**

The Department of Pesticide Regulation (DPR) and the California Agricultural Commissioners and Sealers Association (CACASA) developed the Enforcement Response Policy (ERP). CACASA's Board of Directors approved this policy on August 18, 2005.

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**August 2005**

## **Enforcement Response Policy**

<b>About this Policy</b>	The Department of Pesticide Regulation (DPR) and the California Agricultural Commissioners and Sealers Association (CACASA) developed the Enforcement Response Policy (ERP). The CACASA Board of Directors approved it on August 18, 2005. It supersedes the Enforcement Guidelines document (December 1994) and its Technical Revision (December 2002).
<b>Goal</b>	The goal of the enforcement programs of the DPR and the County Agricultural Commissioners (CAC) is to improve and protect the public health, property, pesticide worker safety, and the environment of the State of California.
<b>Accomplishing the Goal</b>	<p>DPR and CACs will work to accomplish our goal by:</p> <ul style="list-style-type: none"><li>• Prevention and prompt investigation of pesticide use or misuse incidents</li><li>• Prompt response to incidents when laws and regulations have been violated</li><li>• Investigation of all pesticide-related complaints</li><li>• Deterrence - Specific to the violator and/or generally to the regulated community</li><li>• Removal of any economic advantage or savings realized by noncompliance</li><li>• Appropriate application of enforcement responses, including, but not limited to, penalties for violations with an escalation in level of enforcement for recurrent violations or repeat violators</li><li>• Satisfaction of federal program authorization requirements</li><li>• Increasing-public awareness</li><li>• Increasing-knowledge, support, and understanding by the regulated community about pesticide regulatory requirements.</li></ul>
<b>Objectives</b>	The Department and the CACs intend to meet these goals by taking timely and effective enforcement actions against violators and by promptly responding to any actual or potential harm to the public health, property, worker safety, and environment of the State of California. This ERP sets forth a violation classification system and enforcement response procedure.

## **Enforcement Response Policy, Continued**

### **Policies and Disclaimer**

The policies in this document are intended solely for the guidance of employees of DPR and CACs. The policies are not intended to, nor do they, constitute rulemaking by DPR and CACs may not be relied upon by any person to create a right or benefit. DPR and CACs may take an action that is at variance with the policies and procedures contained in this document, if appropriate, in a specific case.

### **Two-Step Process**

Under the ERP, determining the appropriate type of enforcement response in a given case is a two-step process:

1. Classify the type of violation.
2. Consistently determine the appropriate action and use progressive enforcement response.

## **Enforcement Response Policy, Continued**

### **Step 1-Classify the Violation**

#### **Step 1: Classify the Violation – HEV or UV**

The classification for the violation dictates both the priority and type of enforcement response. There are two classes of violations:

1. Hazard or Effect Violations (HEV)  
HEVs are violations for which a prompt response is necessary to protect public health, safety, the environment or for other important policy reasons. DPR and CACs will consider these violations its highest enforcement priority.
2. Unclassified Violations (UV)  
UVs are violations which may still be significant, but for which there is less of a need for a prompt response. The classification of the violation as an “unclassified violation” should not be construed as an indication that the violation is not important for the public and the environment. Rather, it is an indication that responding to and correcting UVs is second in priority for DPR and CACs to responding to and correcting HEVs. The classification is not intended to imply that the DPR and CACs will respond to all HEVs before it takes actions with respect to any UVs. Rather, the classifications are meant to guide DPR and the CACs generally in prioritizing their responses to violations.

#### **Hazard or Hazard Violation**

Hazard is defined as “a source of danger.”

Application of “hazard” in applying fine guidelines: An actual health or environmental effect may support a finding that a violation could have created or did create an actual health or environmental hazard; however, it is not required that an actual health or environmental effect occur to prove that a hazard existed and it is not required that an actual health or environmental effect occur in order for a violation to be classified as “A” for fine purposes.

**Enforcement Response Policy, Continued**  
**Step 1-Classify the Violation, Continued**

<b>Effect or Effect Violation</b>	<p>Effect is defined as “the result or consequence of an action.”</p> <p>Application of “effect” in applying fine guidelines: An actual health or environmental effect may support a finding that a violation could have created an actual health or environmental effect; however, it is not required that an actual health or environmental effect occur in order for a violation to be classified as “B” for fine purposes.</p>
<b>Unclassified Violation</b>	<p>An unclassified violation does not pose a threat to health, property, or the environment. Unclassified (or undefined) violations can be classified as “C” for fine purposes.</p>
<b>Harm</b>	<p>Harm is defined as “hurt, damage, or injure.”</p> <p>Application of “harm” in applying fine guidelines: Actual health or environmental harm may support a finding that a violation could have created or did create actual health or environmental harm; however, it is not required that actual health or environmental harm occur to prove that a hazard existed and it is not required that an actual health or environmental harm occur in order for a violation to be classified as “A” or “B” for fine purposes.</p>

## **Enforcement Response Policy, Continued**

### **Step 2-Determine Appropriate Action**

#### **Step 2- Determine the Appropriate Action**

The appropriate enforcement response and the priority of that case compared to other cases, is determined by the classification of the violation.

There are two types of enforcement responses:

1. Enforcement actions - examples follow:

- Administrative civil penalties
- Disciplinary actions against a license, certificate or permit (i.e., refuse, revoke, suspend)
- Civil court action
- Criminal court action

2. Compliance actions - examples follow:

- Cease and desist order\* that contains a follow-up compliance action (listed below)
- Violation notice
- Warning letter
- Documented compliance interview
- Non-compliance noted on an inspection form

**AND**

- Public protection actions - examples follow:
  - Cease and desist order\* (by itself)
  - Seize or hold produce order
  - Prohibit harvest order

*\* Some agencies refer “cease and desist orders” as “stop work orders”*

## **Enforcement Response Policy, Continued**

### **Step 2-Determine Appropriate Action, Continued**

#### **Enforcement Actions**

An enforcement action documents, notifies, and proposes to penalize or penalizes a person for an activity that violates applicable laws or regulations. An enforcement action must provide the respondent/violator with notice and an opportunity to be heard before a sanction or penalty is enforced.

Examples of frequently used enforcement actions are:

- Administrative civil penalties
- Revocation
- Suspension of county registration and refusal
- Revocation or suspension of a restricted materials permit.

Examples of higher-level enforcement actions are:

- A formal request to the DPR to initiate a licensing action
  - A formal referral to a District or City Attorney or Circuit Prosecutor for civil or criminal adjudication
- A formal request by the DPR to the Office of the Attorney General.

#### **Compliance Actions**

A compliance action is an activity that documents and notifies a person of a violation of applicable laws or regulation. Examples of compliance actions are:

- Warning letters
- Violation notices/notices of violation
- Inspection forms with one or more non-compliances noted
- Documented compliance interviews.

A compliance interview is not considered a compliance action if it is not documented in a manner that provides information about the specific non-compliance or problem, meeting date, parties present, and the proposed corrective action. “Public protection actions” are also considered compliance actions.

## **Enforcement Response Policy, Continued**

### **Step 2-Determine Appropriate Action, Continued**

#### **Public Protection Actions**

A public protection action is an action initiated to immediately protect the public health or safety. Public protection options are not penalties in and of themselves, though they may temporarily have the effect of a penalty. They usually require an additional action to become permanent. Examples of public protection actions are:

- Cease and desist orders
- Seize/hold produce orders
- Crop abatement orders
- Crop seizures
- Prohibit harvest orders and pesticide seizures.

#### **Requirements Intended to Prevent Unwanted “hazards” or “effects”**

Requirements specific to investigation authorities and employee interviews, i.e., Title 3 California Code Regulations (3CCR) section 6140 and section 6141; research authorizations, 3CCR sections 6260-6272; restricted materials permits, 3CCR section 6400, et seq.; licensing and certification, 3CCR section 6500, et seq.; work requirements, 3CCR section 6600, et seq., except 6622-6628; and pesticide worker safety, 3CCR section 6700, et seq., are intended to protect the public health and safety of Californians and their environment. Failure to adhere to these requirements can result in health or environmental hazards or effects. Most of the above-listed violations fall under the HEV category.

#### **Citeable Sections**

Definitions found in 3CCR section 6000, et seq. are not “citeable” as violations. Sections that can be “cited” and advisories for citation, for purposes of initiating an administrative civil penalty action, pursuant to Food and Agricultural Code (FAC) section 12999.5, or Business and Professions Code section 8617, can be referenced at:

<<http://www.cdpr.ca.gov/docs/enfcmpli/admnacts/citsec.pdf>>

This web page is frequently updated and should be reviewed each time prior to initiating a civil penalty action.

#### **Consistency**

To effect statewide consistency, the enforcement response policy must be considered each and every time there is a violation to determine the appropriate response or action.

CACs will respond to a HEV with an enforcement action and/or a compliance action (or public protection action), or if circumstances warrant, a formal referral to DPR for an enforcement action or statewide licensing action, except in unusual or unique circumstances.

## **Enforcement Response Policy, Continued**

### **Step 2-Determine Appropriate Action, Continued**

#### **Non-Compliances and Violations**

A “violation” or “non-compliance” is a failure to comply with any law or regulation. Forms, hearings, interviews, or letters may document non-compliances or violations. “Violation” and “non-compliance” are used interchangeably in the California Pesticide Regulatory Program.

#### **Progressive Enforcement Actions**

Regulatory actions are most effective when a regulator uses enforcement tools that are likely to result in a positive change in behavior. Severity and frequency of violations are key factors in determining which enforcement tool a regulator will use. Progressive enforcement responses use an assortment of tools, varying in degree from lower-level actions, such as non-compliance notices or warnings to middle-level actions, such as administrative civil penalties to higher-level actions, such as a disciplinary actions or a criminal sanctions.

#### **Incidents and Subsequent Incidents**

For purposes of determining an appropriate enforcement response, an incident is an occurrence when one or more violations are discovered.

- An incident may be limited to a single routine inspection or audit.
- An incident may include several inspections.
- An incident may be an investigation or the sum of follow-up activities related to a pesticide episode.

A subsequent incident is an incident that takes place later and is separate from another incident within two-years of a previous incident. “Subsequent incident” should not be confused with “repeat violation” a concept to be considered when determining the correct fine (or penalty) classification.

## **Enforcement Response Policy, Continued**

### **Step 2- Determine Appropriate Action, Continued**

#### **Repeat Violation - for Fine Determination Purposes**

A violation shall be considered a “repeat violation” (for fine determination purposes) when the following criteria are met:

1. The respondent against whom the fine action is proposed had a prior violation that was in the same fine class (A, B, or C) as the current violation; **and**
2. An administrative civil penalty was levied for the violation within two years of the date of the current notice of proposed action by the county that proposed the current action.

Repeat violations do not need to be violations of the same law or regulation, or violations of a similar law or regulation. When counted towards the “repeat,” they only need to have been previously categorized in the same fine class as the current violation.

“Repeat” violations must be kept within the confines of an administrative civil penalty program. For example, a violation which is taken pursuant to the authority of FAC section 12999.5 (Agricultural Civil Penalty Program) can be used to support a “repeat” in another penalty action taken pursuant to the authority of FAC section 12999.5, but it cannot be used to support a “repeat” in a penalty action taken pursuant to Business and Professions Code section 8617 (Structural Civil Penalty Program), and vice-versa.

#### **Formal Referral**

A formal referral is a letter to another agency, (e.g., District or City Attorney, Circuit Prosecutor, or Attorney General), requesting assistance or prosecution. A formal referral should contain facts and information, an analysis of the problem, a summary of actions taken by the initiating agency to date, and a request for assistance.

#### **Decision Report**

A decision report is an official explanation and record of the CAC’s decision. It is not an action in and of itself. A decision report is required when the CAC’s decision does not follow the Enforcement Response Policy - Enforcement Responses (table).

The decision report format attached in this document is the approved version of the form. Counties may incorporate their own letterhead or logo or form number.

A decision report is not valid unless signed by the CAC or his/her designee, such as a deputy or assistant CAC.

#### **Enforcement Responses**

Use the following table to determine the correct enforcement responses for “Hazard or Effect Violations,” or “Unclassified Violations.”

**Enforcement Response Policy, Continued**  
**Enforcement Responses**

<b>Hazard or Effect Violations (HEV)</b> <b>Class A (serious) Fines</b>	<b>Hazard or Effect Violations (HEV)</b> <b>Class B (moderate) Fines</b>	<b>Unclassified Violations (UV)</b> <b>Class C (minor) Fines</b>
<p>Violations that created an actual health or environmental hazard.  <b>OR</b></p> <p>Violations of a lawful order of the commissioner issued pursuant to Food and Agricultural Code sections 11737, 11737.5, 11896, or 11897.  <b>OR</b></p> <p>Violations that repeat Class B (moderate) violations.</p> <p>Fine range for Class A (serious) violations:  <b>\$700 to \$5,000</b></p> <p><i>Consider formal referral to the District or City Attorney or Circuit Prosecutor.</i></p> <p><b>First incident :</b>  Enforcement action</p> <p><b>Any subsequent incident :</b>  Enforcement action</p> <p><i>Consider elevating action-level and/or fine amount.</i></p>	<p>Violations that posed a reasonable possibility of creating a health or environmental effect.  <b>OR</b></p> <p>Violations that repeat Class C (minor) violations.</p> <p>Fine range for Class B (moderate) violations:  <b>\$250 – \$1,000</b></p> <p><i>Consider initiating communication with District or City Attorney or Circuit Prosecutor.</i></p> <p><b>First incident :</b>  Enforcement action  <b>OR</b>  Compliance action - with decision report</p> <p><b>Any subsequent incident :</b>  Enforcement action</p> <p><i>Consider elevating action-level and/or fine amount.</i></p>	<p>Violations that do not threaten health, property, or the environment.  <b>AND/OR</b></p> <p>Violations that are not defined in either Class A (serious) or Class B (moderate).</p> <p>Fine range for Class C (minor) violations:  <b>\$50 - \$400</b></p> <p><b>First incident :</b>  Compliance action - no decision report  <b>OR</b>  Enforcement action</p> <p><b>Any subsequent incident :</b>  Compliance action - with decision report  <b>OR</b>  Enforcement action</p>

For administrative civil penalty actions initiated pursuant to the authority of Food and Agricultural Code section 12999.5: The full regulatory definition of class A, B, and C fines are found in Title 3, California Code of Regulations (3CCR) section 6130, **Civil Penalty Actions by Commissioners**.

For administrative civil penalty actions initiated pursuant to the authority of Business and Professions Code section 8617: The full regulatory definitions of serious, moderate, and minor fines are found in Title 16, California Code of Regulations (16CCR) section 1922, **Civil Penalty Actions by Commissioners**.